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IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1994

THE AMERICAN UNION OF BAPTISTS, INC., *et al.*,

Petitioners,

v.

THE TRUSTEES OF THE PARTICULAR PRIMITIVE BAPTIST CHURCH AT BLACK ROCK, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

RESPONDENTS' BRIEF IN OPPOSITION

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SUMMARY OF REASONS WHY THE PETITION SHOULD BE DENIED

- Petitioners have not preserved for appeal the core ruling below: that they are estopped from asserting a claim to control over the respondent church.

- Petitioners' Questions Presented No. 2 and 3 were not presented to the Maryland Court of Appeals.

- No dispute exists between the parties and the Court of Appeals as to the applicable First Amendment decisional rules.

- Petitioners do not challenge the Court of Appeals' application of First Amendment guidelines to the basic issues that it decided were necessary to resolve the appeal.

- Essentially, petitioners merely challenge the Court of Appeals' choice of which issues under state law were necessary to resolve the case.

STATEMENT OF THE CASE

Respondents, the Trustees of the Particular Primitive Baptist Church at Black Rock, Inc. ("Black Rock") and others, filed suit in Maryland state court in July 1988 seeking (i) a declaration that petitioners' attempt to merge the Black Rock church into the American Union of Baptists ("AUB") was invalid and (ii)

injunctive relief to require petitioners to release control of church assets.

Pursuant to Maryland Corps. & Ass'ns Art. § 5-310 and petitioners' request, this dispute was assigned to an arbitration panel, which in October 1991 issued its decision. As the Court of Appeals held and petitioners admit [Respondents' Appendix ("Resp. App.") at 21a - 22a], under Maryland law judicial review from such arbitration is extremely limited: an appellant must demonstrate that the decision is "completely irrational" or "palpably mistaken on its face."

Given this unusually narrow standard of review, the logical starting point from which to understand this case is with the only fact finding that has been done, that of the arbitration panel. Headed by a retired Court of Appeals judge, the panel (by a two-to-one vote) rejected petitioners' claim that the Black Rock church had merged into the AUB and, therefore, was under petitioners' control.

The arbitrators found[1] that the dispute over control of Black Rock (which has its origins in the 1840s in Baltimore County, Maryland) to be between the "Osborne group" (the instant petitioners) and the "Welden group" (who now worship at the church). In the 1970s and '80s Osborne had been the president of Black Rock and, as its attorney, had drafted most of its corporate

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[1] This textual account paraphrases the arbitrators' report, which is reprinted in Petitioners' Appendix ("Pet. App.") at 28a - 44a.

documents. Its articles of incorporation adopted and recorded on 1978 established ten trustees, exclusive of the minister, who would serve four-year terms.

At a 1986 trustees meeting Osborne sought to have the church declared dissolved. His logic was that because its last "member" had died in 1972, it had then ceased to exist. Osborne's religious-based definition of "member" excluded those persons who engaged in "open communion," a definition eliminating all who were currently worshipping at Black Rock. The attending trustees voted down Osborne's proposal by a 6-to-3 margin. He then commenced a state court proceeding seeking dissolution, which also proved unsuccessful.

With Osborne, its president, claiming the church not in existence, in May 1987 its vice president (Welden) and secretary called a special meeting of the trustees to elect new church officers. Considering Black Rock not to have been dissolved, the trustees selected new officers and removed Osborne due to his attempts to undermine the church.

Also in May 1987, Osborne created a new corporation, petitioner AUB, and filed papers with the state merging it with an entity called the Trustees of Ebenezer Primitive or Old School Baptist Church of Baltimore, Inc. ("Ebenezer"), of which he claimed to be president. He then asserted that due to the demise of Black Rock, its assets had passed to Ebenezer. Accordingly, he claimed, with Ebenezer's merger with

AUB, Black Rock and its assets were now controlled by Osborne's AUB. The instant suit then followed.

The arbitrators, who were convened pursuant section 5-310 of the state's Religious Corporations Act [Pet. App. at 47a], found that Osborne, acting as president of Black Rock, had consistently for many years prior to 1986 recognized its existence. At no time had he claimed that Ebenezer had inherited its assets. At a time when he was now claiming that there had been no living church member, and therefore no church, Osborne had been busy drafting legal documents that recognized the existence of Black Rock. The arbitrators further found that persons continue to attend the church (although due to having open communion, they were not recognized by Osborne as "members").

Based on these factual findings, the arbitrators applied equitable principles and held that "Osborne by his various actions is estopped to deny the existence of Black Rock Church . . . ." [Pet. App. at 42a] Furthermore, it held that the trustees were entitled to call the June 1987 meeting due to Osborne's refusal to do so. Because Osborne's term by then had expired, the arbitrators held that there had been no need to remove him as president or as a trustee. Accordingly, the arbitrators affirmed the legal existence of Black Rock and recognized the "Welden group" to be its officers and trustees.

In their eventual appeal to the Court of Appeals, petitioners did not challenge the arbitrators' estoppel rulings, but rather limited their issues on the merits to the

propriety of the Welden group to call the June 1987 meeting and the existence of a quorum at that meeting. [Resp. App. *passim*]

Upon analyzing what was to be reviewed, the Court of Appeals began with petitioners' challenge to the June 1987 trustees meeting.[2] The Welden group asserted that because Osborne had failed in his duty to call an annual meeting, it had properly done so without him. Osborne's response was that because there was no longer a church, he had no duty to call a meeting. The Court of Appeals therefore saw itself as having to decide if Black Rock was "extinct." But that decision would require it to decide who constituted a "member" of the church. This, in turn, would require judicial resolution of whether membership excluded those who engaged in "open communion." The Court deemed it inappropriate under First Amendment constrictions for it to delve into this "theological thicket."

Second, the Court of Appeals noted, even if it were to find that the church had no valid member, it would have had to determine whether the "recognized practice of the denomination of Primitive Baptists" permitted Ebenezer to accede to Black Rock and, in turn, turn it over to AUB. It declined to enter into any "interpretation of religious custom and polity." It, accordingly, declined to review further the arbitrators' decision.

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[2] A copy of the Court of Appeals' opinion is in Pet. App. at 1a - 16a.

REASONS WHY THE PETITION SHOULD BE DENIED

I. Petitioners Have not Preserved for Review All Relevant Substantive Issues

Petitioners presented a streamlined argument to the Court of Appeals raising two basic issues, one procedural and one substantive. First, they argued that section 5-310 did not totally bar judicial review of arbitrators' decisions. [Resp. App. at 16a - 20a] The Court of Appeals agreed with petitioners on this point. Second, they argued that as a matter of corporate law the June 1987 meeting of the Black Rock trustees was invalidly noticed (only the president, and not the vice president could call such a meeting) and that no quorum existed, thus precluding any deliberative action by those trustees present. [Resp. App. at 23a - 29a]

Significantly omitted from petitioners' brief was any reference to the core finding of the arbitrators: that petitioner Osborne was estopped to challenge the actions of the remaining trustees and to claim transfer of Black Rock to Ebenezer and then AUB. Thus, petitioners now concede that AUB has no valid claim to Black Rock. This concession leaves little, if anything, of their case.

The brief is also devoid of any reference to the latter two issues on which certiorari is now sought. Petitioners did not suggest to the Court of Appeals that the Maryland Religious Corporations Act may be

unconstitutional (as is claimed in their Question Presented No. 2). Similarly, nowhere is found a claim that the failure to offer judicial review would deny petitioners due process of law (Question Presented No. 3).

Thus petitioners have only preserved their first Question Presented: whether the Court of Appeals' refusal to review the merits of the controversy conforms with First Amendment standards. As a comparison of the arbitrators' report and petitioners' brief in the Court of Appeals reveals, however, by only arguing to the Court of Appeals the notice and quorum issues, petitioners have conceded all substantive issues that underlay the arbitrators' decision. Thus, nothing is left of petitioners' case that could at this date bring them relief. A case in this mutilated posture should not lend itself to the issuance of a writ of certiorari.

II. The Nature of the Dispute Below Makes Certiorari Inappropriate

This case presents no doctrinal differences between each party and Maryland's highest court. The Court of Appeals and the parties all rely upon the same legal rules regarding when a court can resolve issues relating to a church. *Compare* Pet. at 10 & 12-15 *with* Court of Appeals Opinion [Pet. App. at 12a - 15a]. Thus, no legal clash exists.

Furthermore, petitioners have made no challenge to the Court of Appeals' holding that the First Amendment bars its resolution of those issues that it deemed necessary to decide in order to resolve

petitioners' appeal. Petitioners do not suggest that the Court should have decided who were Black Rock "members" and when the assets of an extinct church pass on to a sister church. Consequently, this case presents no claim that the Court of Appeals has misapplied the First Amendment case law to these issues. Petitioners admit as much. [Pet. at 11]

Instead, at the heart of the controversy in its present posture is a difference over which fact and state law issues are crucial to appellate resolution of the arbitrators' ruling. Petitioners claim that the core issues for appellate review are whether a trustees' meeting was commenced with proper notice and conducted with a quorum. To the Court of Appeals, however, a vastly different set of issues were necessarily presented. Thus, any review by this Court would merely concern an appraisal of whether the Court of Appeals properly dissected the factual and legal problems presented. Did it accurately list the issues that must be resolved to adjudicate the case on appeal? In essence, the appellate court ruled that the necessary issues were A and B, and that these required religious doctrinal inquiry. Petitioners, on the other hand, claim the issues to be C and D, which arguably do not require such inquiry. In essence, therefore, any review by this Court would turn on whether the issues are A and B (as the Court of Appeals held) or, rather, C and D (as petitioners contend). Respondents submit that this Court does not sit to second guess a state court's decision as to what issues are presented in a case adjudicated under state law. Accordingly, the judicial

function that petitioners seek to invoke from the Court is not one over which it should exercise its certiorari power.

III. Petitioners Pose a Mere Academic Question

Even if the Court were to grant certiorari and direct the Court of Appeals to conduct a review on the merits, in light of the issues already waived by petitioners and the stringent standard of review that petitioners acknowledge would apply, they would have no chance of success on the merits.

As has been explained, by failing to appeal the arbitrators' estoppel findings, petitioners have already conceded that AUB has no claim to Black Rock property. This being the case, petitioners seek no more than an advisory opinion as to Maryland corporate law concerning the calling of a trustee meeting and its required quorum.[3]

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[3] The arbitrators upheld the propriety of someone other than the president calling a trustees' meeting. They had "no doubt that had the other trustees sought a writ of mandamus to compel [Osborne] to call the meeting," a court would have so ordered. [Pet. App. at 43a] As to the quorum issue, because by then Osborne's term had expired, the number of trustees was nine. Thus, five was a majority. Alternatively, respondents argued below that the term of another trustee had ended due to his poor health and incompetence. Under either ground, the arbitrators' holding that a quorum was present [Pet. App. at 36a] could not be called "clearly irrational," and subject to state court reversal.

Furthermore, as the Court of Appeals noted below, Maryland common law severely limits the standard for judicial review of an arbitration decision. An award can only be vacated for a "palpable mistake of law or fact . . . apparent on the face of the award" or for a "mistake so gross as to work manifest injustice." [Pet. App. at 9] Thus, a Maryland appellate court must give arbitration decisions--regardless of their religious context--extreme deference, almost to the point of nonreviewability. For all intents and purposes, this narrow standard would deny petitioners any further relief. Their present petition, therefore, poses but academic hopes against a foregone conclusion. A case in this anemic state does not qualify for certiorari relief.

CONCLUSION

For the several reasons set forth above, nothing presented in this petition comes within the scope of

Supreme Court Rule 10.1. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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In The
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Certiorari to the Court
of Special Appeals

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STATEMENT OF THE CASE

This is an appeal from an Order of the Circuit Court for Wicomico County granting Appellee's Motion for Summary Judgment and denying Appellant's Motion to Vacate The Award Of The Panel Of Arbitrators appointed to determine who were the legitimate Trustees of the Particular Primitive Baptist Church at Black Rock, Inc. (hereinafter referred to as "Black Rock").

Appellant, the American Union of Baptists, Inc. (hereinafter referred to as "AUB") is a Maryland religious corporation incorporated in 1987 and located in Salisbury, Wicomico County, Maryland. Appellee, the Trustees of the Particular Primitive Baptist Church at Black Rock, Inc. is a Maryland religious corporation located in Butler, Baltimore County, Maryland.

The conflict between the parties arises out of a Special Meeting of the Trustees Black Rock called by its Secretary and Vice President and held on June 13, 1987 at the Black Rock Church for the purpose of electing officers. Appellants contended that the meeting was not properly noticed, lacked the majority vote required to take action and, consequently, the ouster of certain Trustees and election of new officers attempted at that meeting was invalid. Appellees contend to the contrary. Thus, the two groups each claim that the power to control the temporal matters of Black Rock is solely and properly vested in them.

On July 12, 1988 Appellees filed suit in the Circuit Court for Wicomico County seeking declaratory and injunctive relief; requesting a declaration of which group was the legitimate trustees of the Black Rock Church and an injunction to enjoin the transfer of church property. Thereafter, Appellants filed a Motion to Compel Arbitration pursuant to Maryland Corporations and Associations Code, §5-310. Pursuant to Section 310, each side appointed an arbitrator. However, they were unable to agree upon a third. As a result thereof, the Court appointed the third arbitrator. Arbitration was conducted and the decision of the majority of the arbitrators was that the removal of certain Trustees and the election of new officers at the meeting of June 13, 1987 was valid. Appellants moved to vacate the award, which relief was denied.

An appeal was noted by the Appellant to the Court of Special Appeals and that Court affirmed the judgment below. The American Union of Baptists, Inc., et al. v. The Trustees of the Particular Baptist Church at Black Rock, et al., 98 Md. App. 11 (1993).

Appellant's petition to this Court for issuance of its Writ of Certiorari was granted on January 28, 1994.

STATEMENT OF QUESTIONS PRESENTED

I. IS AN ARBITRATOR'S DECISION ON THE VALIDITY OF A CONTESTED CHURCH ELECTION MADE PURSUANT TO CA §5-310 SUBJECT TO JUDICIAL REVIEW?

II. WAS THE UNDERLYING DECISION OF THE ARBITRATORS COMPLETELY IRRATIONAL OR PALPABLY MISTAKEN ON ITS FACE.

STATEMENT OF FACTS

I.

The Trustees of the Particular Primitive Baptist Church at Black Rock, Inc. became incorporated in 1891 (E-15). In 1987 Articles Of Amendment and Restatement of the Articles of Incorporation of Black Rock were filed with and approved by the State Department of Assessments and Taxation (E-21).

The Restated Articles provided for election of 10 Trustees in addition to a minister trustee. Election was by the individuals who, according to custom and rules of order of the church, have a voice in the management of the spiritual and ecclesiastic affairs. Each trustee served a four (4) year term and automatically stood for re-election to additional terms until death, resignation, incapacity or removal pursuant to or by operation of law (E-22).

In the event of a vacancy, the remaining trustees were permitted to fill same by majority vote or, alternatively, adopt a resolution for a special election by the congregation. In the event any election was not fully consummated the trustees then serving held over until an election and seating of trustees was completed (E-22). At all meetings of the Board of Trustees the majority of its members then serving constituted a quorum (E-23).

The By-Laws of the corporation provided for election by the trustees of four (4) officers; president, vice-president, secretary and treasurer, whose duties are set forth therein. Officers were required to be elected at the trustees' annual meeting for four (4) year terms with the first election to be held at the annual meeting in 1979. Vacancies in an office were to be filled by the trustees at the next annual meeting (E-46).

The president was vested with the sole authority to call meetings necessary to transact church business. (E-46).

At the first annual meeting after the Amendment and Restatement of the Articles of Incorporation, Eugene F. Osborne, Sr., George R. Welden, Luwanda D. Viers and Melvin Gladding were elected as President, Vice-President, Secretary and Treasurer, respectively. Additional Trustees elected at that time were John B. Ensor, Melvin B. Gladding, Quincy Gladding, Eugene F. Osborne, Sr., Emma Parker, Carl H. Viers, Luwanda D. Viers, J. Russell Welden and George R. Welden (E-5).

At the annual meeting of May 3, 1981 Lucille Acres, Virginia W. Gladding and Gail Thompson were elected as members of the Board of Trustees (E-55). The next scheduled election of trustees occurred on May 1, 1983 at the annual meeting of Black Rock, at which time the aforementioned trustees were re-elected to a second four year term, as were the aforementioned officers (E-59).

The aforementioned trustees continued in office with the exception of the minister, Elder John D. Wood, who had died in 1985. The last remaining member of the church, Mrs. Gillespie, had died in April of 1972 (E-49). With the death of the minister and the last remaining member of the church, the President, Eugene F. Osborne, called a special meeting of the trustees for December 8, 1986 to present a motion to dissolve the corporation, which motion failed (E-65). Thereafter, Eugene F. Osborne, Melvin Gladding, and Virginia Gladding, as minority trustees, filed an action in the Circuit Court for Baltimore County, for involuntary dissolution. That petition was dismissed and such dismissal was affirmed by this court in unreported opinion no. 748 of the September term, 1987.

On May 27, 1987, George R. Welden, Vice President of the trustees of Black Rock and Luwanda D. Viers, Secretary, sent notice to the trustees of a special meeting of the trustees of Black Rock to be held on June 13, 1987 for the purpose of election of officers. (E-66). On June 4, 1987, prior to the scheduled meeting, Eugene F. Osborne, Sr., President of the trustees, sent notice to

all other trustees indicating that the Secretary and Vice President of Black Rock did not have the authority to call any meeting necessary to transact church and cemetery business. In that notice he indicated that the scheduled meeting was invalid and of no effect and that any actions taken would not be honored as binding upon Black Rock (E-72).

The meeting went ahead as scheduled and the five trustees present were George Welden, Luwanda Viers, Russell Welden, Gail Thompson, and Carl Viers. The five trustees absent were Eugene F. Osborne, Sr., Melvin Gladding, Virginia Gladding, Lucille Akers, and John D. Ensor. At the aforementioned meeting, the five trustees voted unanimously to remove Eugene F. Osborne from the office of President and from his office as trustee. In addition, a motion was also passed to remove Melvin and Virginia Gladding from the board of trustees. Officers elected at that time were George Welden, President; Luwanda Viers, Vice President; Russell Welden, Treasurer; and Gail Thompson, Secretary (E-69).

At this time, there existed a Baltimore Association of Baptist Churches, which had been in existence since at least the 1920's. The subject church, Black Rock, was a member of that association, as was the Ebenezer Primitive or Old School Baptist Church of Baltimore City (hereinafter referred to as "Ebenezer"). Ebenezer contended that with the extinction of the Black Rock Church as a result of the death of its last member in 1972, that pursuant to and consistent with recognized practice of the denomination of the Primitive Baptists, the control

of Black Rock became vested solely in Ebenezer (E-92). On July 23, 1987, the trustees of Ebenezer Primitive or Old School Baptist Church of Baltimore City, Inc. merged into the American Union of Baptists, Inc. pursuant to Articles of Merger, filed with and approved with the State Department of Assessments and Taxation on the aforementioned date. (E-92). On April 16, 1988, the annual meeting of the American Union of Baptists, Inc. was held in Salisbury, Maryland, at which time a resolution was presented to the trustees of AUB to exercise its authority to elect individuals to serve as trustees of Black Rock. That resolution was unanimously adopted and new trustees were elected (E-93). Those trustees were Milton Fountain, Victor H. Laws, Eugene F. Osborne, Jenny E. Osborne, and Burnell B. Williams (E-93). On the same date, the newly elected trustees of Black Rock passed a resolution merging Black Rock into the American Union of Baptists (E-93).

On July 12, 1988, Appellees filed the aforementioned Complaint for Declaratory Judgment And Injunctive Relief in the Circuit Court for Wicomico County. Demand for arbitration was filed by Appellants and arbitration was had. The majority award of the arbitration panel found that the 1978 Articles of Amendment and Restatement of Articles of Incorporation of Black Rock were valid. The panel found that in 1987, prior to the June 13th meeting, the ten existing and valid trustees were Eugene F. Osborne, President; George R. Welden, Vice President; Luwanda D. Viers, Secretary; Melvin B. Gladding, Treasurer; Lucille Acres, John V. Ensor, Virginia W. Gladding, Gail Thompson, Carl H.

Viers, and Russell Welden (Elder John D. Wood having died in 1985) (E-102). The panel went on the find that the five trustees present at the June 13, 1987 meeting were George Welden, Luwanda Viers, Russell Welden, Gail Thompson, and Carl Viers. The panel found this to be a majority of the board (E-108).

In addition to the aforementioned, the panel, in its opinion, noted that the President was the officer responsible for calling meetings necessary to transact church and cemetery business (E-114). However, the panel also noted in its opinion that the notice of the special meeting of June 13, 1987, given May 27, 1987, was issued by the Vice President and Secretary of the corporation (E-114). The panel was of the opinion that had the trustees sought a Writ of Mandamus to compel the President, Eugene Osborne, to call a meeting, that a court would have issued such an Order. Accordingly, the panel found the meeting of July 13, 1987 to have been validly called and that the action taken therein was also valid (E-115).

In conclusion, the panel found that the officers of Black Rock were President, George Welden; Vice President, Luwanda Viers; Treasurer, Russell Welden; Secretary, Gail Thompson, and that the Trustees of the corporation were George Welden, Luwanda Viers, Russell Welden, Gail Thompson, Carl Viers and Emma Parker (E-115).

ARGUMENT

THE COURT OF SPECIAL APPEALS ERRONEOUSLY HELD THAT THERE IS NO RIGHT OF JUDICIAL REVIEW OF THE DECISION OF ARBITRATORS MADE PURSUANT TO CORPORATIONS AND ASSOCIATIONS, §5-310.

In its opinion the Court of Special Appeals held that judicial review of the decision of arbitrators under Corporations and Associations, §5-310 is precluded by the First Amendment to the United States Constitution as it would "inevitably" involve an unconstitutional intrusion into matters of religious doctrine. Additionally the Court of Special Appeals held that the legislature in enacting Corporations and Associations, §5-310 and its predecessors intended to remove from the courts the issues of church polity that "inevitably" arise in disputed church elections and, accordingly, Corporations and Associations, §5-310's description of the arbitrators award as "final" carries a different meaning than in other contexts. In each of these conclusions the Court of Special Appeals has erroneously determined that the resolution of a disputed church election would "inevitably" require consideration of issues of church polity. To the contrary, this dispute only requires the application of the neutral principles of the Maryland Religious Corporation Law and the provisions of Articles of Incorporation and By-Laws of Black Rock.

A. RESOLUTION OF THE ISSUES PRESENTED DOES NOT INVOLVE CONSIDERATION OR DETERMINATION OF RELIGIOUS DOCTRINE, BUT SIMPLY THE APPLICATION OF NEUTRAL PRINCIPLES OF LAW.

The dispute before this court centers around the validity of an election and ouster of officers attempted at a special meeting of the Trustees of Black Rock on June 13, 1987. The election and action taken at that meeting were invalid due to improper notice and the absence of both a quorum and a majority vote. Determination of legality of the action only requires the application of corporate law and the mandates of Black Rock's Articles of Incorporation and By-laws. It in no way requires consideration or determination of religious doctrine.

There is not an absolute prohibition against civil courts adjudicating disputes between members of religious organizations which involve issues of property, leadership or other matters. However, judicial intervention into ecclesiastical matters is proscribed by the First Amendment. The permissible boundaries of judicial review are set forth in the Supreme Court decision in Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1960) which provided:

> It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values

protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which an be applied without 'establishing' churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. * * * the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." (Emphasis supplied.) (393 U.S. at 449, 89 S.Ct. at 606, 21 L.Ed.2d at 665)

The "neutral principles of law" standard was applied by the Court of Appeals in The Maryland and Virginia Eldership of the Churches of God v. The Church of God at Sharpsburg, Inc., 254 Md. 162, 254 A.2d 169 (1969). In Sharpsburg the Court held judicial review to be appropriate when resolution of the issues only required

application of Maryland religious corporation law and the mandates of the church's corporate charter. The court noted:

> The Maryland Religious Corporation Law is a general law for all religious corporations and has no reference to doctrine. It, therefore, meets the requirements of a 'neutral principle of law'. 254 Md. 168, 254 A.2d 168

In the instant case the court is not called upon to determine religious principles or doctrine, a persons adherence to same or any question regarding religious practice. The court is quite simply asked to determine whether the notice of the special meeting given by the then Vice President violated Maryland Corporations and Associations Code §2-409(b)(1); whether the attempt to conduct valid corporate business in the absence of a quorum or majority vote was impermissible under Maryland Corporations and Associations Code 2-408(a) and (b)[1] and whether each of these acts also violated the charter and By-laws of Black Rock. Resolution of these issues does not involve or require consideration of religious doctrine. As in Sharpsburg, only Maryland general and religious corporate law and the Charter and By-laws of the religious corporation need be considered.

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[1] The provisions of Maryland General Corporation law are applicable to religious corporations under Maryland Corporations and Associations Code §1-102.

Courts of other jurisdictions which have examined the propriety of judicial review of the validity of church elections in light of the First Amendment have also found such review to be permissible. The reasoning of the Court of Appeals of Louisiana in Wilderson v. Baptists, et al., 393 So.2d 195 (La.App., 1980) is persuasive.

> The trial court's finding that the election of members to a board of directors of a nonprofit religious corporation is an ecclesiastical matter not subject to the jurisdiction of the civil courts of this state must be reversed. It is true that the United States Constitution and the Louisiana Constitution, as interpreted by our courts, prohibit civil courts from interfering in the ecclesiastical matters of a religious group. These are matters concerning religious discipline, faith, rule, custom or law which have constitutionally been left for the religious bodies themselves to decide. However, when a nonprofit religious corporation has established itself by a charter and has provided in the charter the time and method of electing its board of directors, the issue as to whether or not the board of directors has been validly elected according to the charter is a question cognizable by the civil courts of this state. The procedural niceties attending the election of a board of directors for a nonprofit religious corporation have nothing

> to do with religious law, custom or policy and are not ecclesiastical matters within the exclusive domain of a particular religious group. A church member who claims that the board of directors was not elected according to the procedure set forth in the charter has a right to have his claim heard by a civil court in this state. 393 So.2d at 197 (citations omitted).

See also, Organization for Preserving the Constitution of Zion Lutheran Church of Auburn, Washington v. Mason, et al., 743 P.2d 848, 49 Wash. App. 441 (1987); Lozanoski v. Sarafin, 485 N.E.2d 669 (Ind. App., 3rd Dist., 1985); LeBlanc v. Davis, 432 So.2d 239 (La., 1983); Smith v. Riley, et al., 424 So.2d 1166 (La. App., 1982).

Appellant submits that the Court of Special Appeals erroneously focused upon the source of the controversy in reaching its conclusion that issues arising out of contested elections "inevitably" involve considerations of religious polity. The proper focus of the court's review is not the source of the controversy, which may well indeed involve issues of religious polity; but rather whether the resolution of the dispute will require the court to decide ecclesiastical issues. This Court's holding in Polen v. Cox, 259 Md. 25, 267 A.2d 201 (1970) clearly emphasizes the distinction:

> The legal standard which the chancellor adopted to determine that the court had no jurisdiction to intervene in this dispute is

founded upon an erroneous interpretation of the Presbyterian and Sharpsburg cases. These cases do not hold that the source of the controversy – that is whether the property dispute is motivated by a controversy over doctrinal practices – is determinative of whether the civil courts can intervene to decide church property disputes. To so hold would too narrowly restrict the scope of the court's jurisdiction. The relevant inquiry must be whether the court can resolve the property dispute on the basis of neutral principles of law which do not involve the resolution by the court of ecclesiastical issues. Thus in the present case, it does seem that the underlying source of the controversy stems from the mother church's assignment of clergy to the position of overseer and the decision to abolish the bifurcated church structure. However, as long as the court does not have to resolve the doctrinal propriety of these changes in order to determine who has legal control of the property, there is no unconstitutional intervention by the state in church affairs . . . 259 Md. 30, 267 A.2d 201.

It is apparent from the above that resolution of the issues arising out of this disputed election will only involve questions of corporate law and that consequently, there is no constitutional bar to judicial review of the validity of the arbitrators determination.

B. THE USE OF THE WORD "FINAL" IN MARYLAND CORPORATIONS AND ASSOCIATIONS CODE §5-310 DOES NOT PRECLUDE JUDICIAL REVIEW OF THE ARBITRATOR'S AWARD.

In its opinion, the Court of Special Appeals held that the legislature intended the word "final" to have a different meaning in Corporations and Associations, §5-310 than in other statutory provisions as it determined that all contested church elections "inevitably" involve a determination of issues of religious polity. For the reasons stated above in Section (A) Appellant submits that such a conclusion is erroneous. Moreover, other statutory provisions and rules of statutory construction compel the conclusion that arbitration awards under Corporations and Associations, §5-310 are subject to judicial review.

"Generally, Maryland law does not permit appeals unless and until the trial court has rendered a final judgment." McCormick Const. Co. v. 9690 Deerco Rd. Limited Partnership, 79 Md. App. 177, 180 556 A.2d 292, 295 (1989). Therefore, the status of the award as "final" is a logical and necessary prerequisite to judicial review.

Further, had the legislature intended awards made under Maryland Corporations and Associations Code §5-310 to be binding and conclusive on the parties, they would have chosen language which evidenced such intent.

The Annotated Code of Maryland contains numerous other provisions regarding arbitration. In each of those where the legislature intended no right of review of an arbitrator's award they expressed such intent in clear and uncertain terms. See, Maryland Code, Article 25, §45 ("The award and determination of the arbitrators or umpire shall be binding and conclusive in the matter submitted"); Maryland Labor and Employment Code §4-109(b) ("A determination and award of a board is final and binds the disputants"); Maryland Transportation Code, §6-402(b) (. . . the decision of that arbitrator if final and binding on both parties); Maryland Transportation Code, §7-602(d) ("A majority determination of the board is final and binding on all disputed matters"). See also, Maryland Estates and Trusts Code, §5-304 and Maryland Code, Article 48A, §541(c).

In addition to the aforegoing, a right of review is available to Appellant under the common law or under the provisions of Courts and Judicial Proceedings Article, §3-224 (Uniform Arbitration Act) and Rule E-2.

The trial court appointed the third arbitrator in this case and referred this matter to arbitration pursuant to the provisions of Maryland Corporations and Associations Code §3-201, et seq. The latter sections

include the provisions of the Uniform Arbitration Act as adopted in Maryland. The Act, at §3-215(a), provides:

> The majority of the arbitrators may determine any question and render a final award (emphasis supplied).

A "final award" under the Uniform Act is subject to being vacated under the provisions of Maryland Courts and Judicial Proceedings Code §3-224. Assuming, arguendo, that the Uniform Act were not applicable, the post award provisions of that Act for vacating the award would still be applicable under the provisions of Maryland Rule E-2 which provides:

> After a final award has been made in writing in an arbitration to which the Maryland Uniform Arbitration Act is inapplicable, court proceedings may be had to confirm, vacate, modify, correct, or enter judgment on the award. In any such case, the revisions of the Maryland Uniform Arbitration Act concerning such proceedings shall be applicable (emphasis supplied).

Prior to the adoption of the Uniform Act and its provisions regarding the review of arbitration awards, the common law provided a similar remedy to a party aggrieved by the arbitrator's decision. The award of an arbitration panel is subject to judicial review and may be vacated under the common-law for any error apparent on

the face of the arbitration award or for a mistake so gross as to work manifest injustice. Board of Education of Prince George's County v. Prince George's County Educators' Association, Inc., 309 Md. 85, 522 A.2d 931 (1987); Parr Construction Co. v. Pomar, 217 Md. 539, 144 A.2d 69 (1958).

Finally, the denial of judicial review of an arbitration award under Corporations and Associations, §5-310 would be a denial of equal protection under the Fourteenth Amendment of the United States Constitution and of the due process clause of Article 24 of the Maryland Declaration of Rights to parties which are compelled to arbitrate a contested church election.

Assuming there is no first amendment bar to judicial review, a party to a disputed church election must have a right of access to the courts under Article 9 of the Declaration of Rights of the Maryland Constitution. While the legislature may subject the exercise of that right to reasonable regulation and impose arbitration as a pre-condition, it cannot completely deny the litigant access to the courts. Attorney General of Maryland, et al. v. James Johnson, et al., 282 Md. 274, 385 A.2d 57 (1978).

Judicial Review is not precluded by the First Amendment to the United States Constitution or the language of Corporations and Associations, §5-310. The right of judicial review is supported by the common law right of review of arbitration awards, Corporations and

Associations, §3-224, Maryland Rule E-2, principles of statutory construction and by Articles 19 and 24 of the Declaration of Rights of the Maryland Constitution.

II. THE DECISION OF THE ARBITRATORS WAS COMPLETELY IRRATIONAL AND PALPABLY MISTAKEN ON ITS FACE.

Standard of Review

The statutory standard of review of an award of an arbitration panel is set forth in Courts and Judicial Proceedings Article, Title 3, Section 224(b) which provides as follows:

> (b) Grounds. - The court shall vacate an award if:
>
> (1) An award was procured by corruption, fraud, or other undue means;
>
> (2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party;
>
> (3) The arbitrators exceeded their powers;
>
> (4) The arbitrators refused to postpone the hearing upon sufficient cause

> being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of Section 3-213 as to prejudice substantially the rights of any party; or
>
> (5) There was no arbitration agreement as described in Section 3-206, the issue was not adversely determined in proceedings under Section 3-208, and the party did not participate in the arbitration hearing without raising the objection.

An award procured by undue means or issued in excess of the arbitrator's powers has been equated by the Court of Special Appeals with an award which is without any rational basis. In O-S Corporation v. Samuel A. Kroll, Inc., 29 Md. App. 406, 348 A.2d 870 (1975) that court held that an award of an arbitrator is subject to judicial review if it is completely irrational. In describing this rule of review, the court held:

> [W]hen reviewing the fruits of an arbitrator's award, a judge may withhold only such as were tainted by improbity or based on a completely irrational

> interpretation of the contract. We recognize the very limited extension of the reviewing court's scope of review to include authority to vacate an award that is 'completely irrational'. Statutory support for this is found not only in the fact that he arbitrators 'exceeded their powers' when they reach a completely irrational result, but also in the connotation of the words 'undue means' in Section 3-224(b)(1). An award that is completely irrational is inferentially opprobrious, i.e., '[e]xpressing or carrying a sense of disgrace of contemptuous scorn' causing it to be suspect in its conception (footnote omitted). Id at 408-09, 348 A.2d at 874;

See also, Southern Maryland Hospital Center v. Edward M. Crough, Inc., 48 Md. App. 401, 427 A.2d 1051 (1981).

The common law standard of review is essentially the same. That is, an arbitration award is subject to being vacated for a "palpable mistake of law or fact apparent on the face of the award or for a mistake so gross as to work manifest injustice. Board of Education of Prince George's County, supra at 105.

Under either standard of review the finding of the arbitrators should be vacated.

THE FINDING OF THE ARBITRATORS THAT NOTICE OF THE SPECIAL MEETING WAS PROPERTY GIVEN WAS COMPLETELY IRRATIONAL AND PALPABLY MISTAKEN ON ITS FACE.

The By-Laws of Black Rock, which were introduced into evidence at the arbitration of this matter, delineate the authority of each of the officers of the corporation. Section 2.1, relative to the president of the corporation, provides that the president "shall appoint necessary committees, fill office vacancies arising from death or resignation, and call such meetings as are necessary to transact church and cemetery business." (emphasis supplied). It is undisputed in this case that the meeting of June 13, 1987 was not called by the President but rather was called by the Vice President and Secretary. Indeed, upon receipt of notice of the meeting, the President, Eugene Osborne, directed communication to all other trustees prior to that meeting that such others were without authority to call same. The law in this jurisdiction and in others is that where the By-Laws authorize a particular officer to call a special meeting, only that officer may validly call same.

In Smith, et al v. Erb, et al, 4 Gill 343 (1846), the court was called upon to resolve a similar dispute between factions of the German Evangelical Reformed Church in the City of Baltimore. The charter of the church provided that all meetings of the elders and trustees be called by the president, who was the minister of the church. At the time of election, two different groups called the meetings and held elections. In that case, the court held that the

election called by one other than the President was invalid, as it was not in conformity with the provisions of the charter of the corporation which required the meeting to be called by the President. See also, Valerino v. Little, 62 Md. App. 588, 490 A.2d 756 (1985), Hebert, et al v. Stansbury, et al, 351 S.2d 253 (1977); 5 Fletcher Encyclopedia of Corporations, Page 15, Section 1997, (Perm Ed).

In addition to the foregoing Maryland case law, Maryland corporate statutory law is also in accord. Maryland Corporation and Associations Code, §2-409(b)(1) provides that notice of each meeting of the Board of Directors shall be given as provided in the By-Laws. It is beyond dispute, therefore, that the meeting of June 13, 1987, called by the Vice President and Secretary, was invalid and improper. It logically and legally flows therefrom that no proper or valid action can be taken at such a meeting.

The majority opinion of the arbitration panel at page 4 clearly recognizes that the authority to call meetings is vested solely in the President. The opinion also acknowledges that notice of the special meeting of June 13, 1987 was given, not by the President; but by the Vice President and Secretary of the corporation. Despite these findings, the arbitrators concluded that the meeting of June 13, 1987 was a valid meeting. This conclusion is internally inconsistent, contrary to the By-Laws of the corporation, and contrary to Maryland law. On its face, therefore, the award of the panel is completely irrational and mistaken. As such, the finding of the panel of

arbitrators that the meeting of June 13, 1987 was valid and that the officers and trustees elected therein legitimately hold office, must be vacated.

THE FINDING OF THE ARBITRATORS THAT FIVE (5) CONSTITUTES A MAJORITY OF TEN (10) WAS COMPLETELY IRRATIONAL AND PALPABLY MISTAKEN ON ITS FACE.

The majority opinion of the arbitrators found that there were ten (10) validly serving trustees at the time of the June 13, 1987 meeting of trustees and that the presence of five of those trustees constituted a majority and quorum. This finding was the basis for the arbitrators' conclusion that the action taken at the meeting was valid. Such a conclusion is contrary to Maryland statutory law, the charter and By-Laws of Black Rock and the most elementary principles of mathematics.

Maryland Corporations and Associations Code, §2-408 provides in pertinent part as follows:

> (a) Majority Rule - Unless this article or the charter or by-laws of the corporation require greater proportion, the action of a majority of the directors present at a meeting at which a quorum is present is the action of the board of directors.
> (b) Quorum - (1) Unless the by-laws of the corporation provide otherwise, a majority of the entire board of directors constitutes a quorum for the transaction of business.

The charter of Black Rock found by the majority opinion to be valid is its 1978 restated charter. Articles II and III contain the following provisions concerning its trustees or directors:

> Article II.
>
> The secular affairs of the corporation shall be governed by a board of trustees, who shall have perpetual existence and who shall exercise all corporate powers ...
>
> The number of trustees shall be ten (10) exclusive of the minister of the church, said minister being a trustee as a requirement of law;...
>
> Article III.
>
> The trustees shall be elected and their successors continued at a meeting of the congregation assembled in the church building at a date preceding the annual meeting of the board of trustees by the individuals who, according to custom and rules of order of the church, have a voice in the management of spiritual and ecclesiastic affairs. Each trustee shall serve gratuitously for a regular term of four years and shall automatically stand for re-election to additional terms until resignation, death, incapacity or removal pursuant to or by operation of law. In the event a vacancy

occurs the remaining trustees may fill said vacancy by majority vote or alternatively the remaining trustees may adopt a resolution for a special election by the congregation.

In the event that any election is not fully consummated, the trustees, then serving shall hold over until an election and seating of trustees is completed.

The By-Laws of Black Rock contain provisions which are consistent with the aforementioned statute and with the 1978 amended Articles of Incorporation. Those provisions are as follows:

Section 1. Trustees.

The number of trustees shall be at least four (4) exclusive of the minister, however the church by two-thirds affirmative vote may designate and elect a larger number of trustees. The trustees are elected to serve a regular term of four years. In the interim, between regular elections by the church, if a vacancy occurs the trustees then serving may fill said vacancy by majority vote or, alternatively, the remaining trustees may adopt a resolution for a special election by the church.

***

Section 2. Officers.

Officers shall be elected at the trustees' annual meeting for regular four (4) year terms starting in 1979. If a vacancy occurs, the trustees shall hold a special election to fill the vacancy at the following annual meeting.

Section 5.

A simple majority of the trustees then serving shall constitute a quorum for official action.

The majority opinion of the arbitrators at page 5 noted the following eleven persons to have been the trustees elected for the 1983 - 1987 term: Eugene F. Osborne, President; George R. Welden, Vice President; Lawanda D. Veers, Secretary; Melvin B. Gladding, Treasurer; Elder John D. Wood, Lucille Acres, John B. Ensor, Virginia W. Gladding, Gail Thompson, Carl H. Veers, and Russell Welden. Elder John D. Wood died in 1985 and there remained in 1985 ten trustees. The majority opinion at page 11 noted that the following five trustees were present at the June 13, 1987 meeting of trustees: George Welden, Lawanda Veers, Russell Welden, Gail Thompson, and Carl Veers. The panel considered these five of the remaining ten trustees to be a majority. This conclusion is completely irrational as a majority of the the trustees then serving had to be greater than five.

The By-laws of the corporation provide that the majority of the trustees then serving constitute a quorum for official action. Absent the existence of that quorum, no official action may be taken. It requires no citation of authority to determine that a majority means greater than one-half, or in this instance, greater than five of the then serving ten trustees.

It is readily apparent from the aforegoing that the trustees could only act when a majority of their body united in concert on a particular issue. In the meeting of June 13, 1987 those trustees present did not constitute a majority of the trustees then serving and their actions of removal of trustees and election of new officers were invalid. The conclusion of the arbitration panel to the contrary is palpably mistaken on its face and completely irrational, as it is not rational to conclude that five constitutes a majority of ten.

CONCLUSION

It is constitutionally permissible for courts to decide disputes involving religious organizations if they can do so by the application of "neutral principles of law." The Maryland General and Religious Corporation Laws are such neutral principles.

Disputes regarding church elections do not inevitably or of necessity involve issues of religious polity and in this specific case a determination of the issues

before the court only requires application of the requirements of corporate law and the charter and By-laws of Black Rock.

Judicial Review of Arbitration Awards specifically provided for under the Uniform Arbitration Act, Maryland Rule E-2 and the Common Law and there is nothing in Corporations and Associations, §5-310 or other statutes which would indicate a legislative intent to preclude review of awards under Corporations and Associations, §5-310.

In order to vacate the award of the arbitrators it must be shown that the arbitrators exceeded their powers by rendering an award which was clearly irrational or palpably mistaken on its face. That burden has been satisfied in this case in two apparent areas. First, the By-Laws of the corporation vest solely in the President the right to call meetings of the trustees to conduct the business of the church. In this instance, the majority opinion of the arbitrators clearly recognized that provision of the By-Laws and noted on two separate occasions that the meeting of June 13, 1987 was called, not by the President, but by the Secretary and Vice President. Despite the clear and undisputed deviation from the mandate of the By-Laws, the panel found the meeting of June 13, 1987 to have been validly called. There is no rational way to sustain such a conclusion.

Second, the By-Laws of the corporation which the arbitrators found to be valid, clearly state that a majority of the trustees then serving constitutes a quorum for

official action. The majority opinion of the arbitrators found that there were ten trustees then serving on June 13, 1987 and than only five of the those trustees were present at the meeting on that date. The panel found those five to constitute a majority of ten. Such evident miscalculation is clearly mistaken.

Based upon the arguments presented above, the failure to vacate the award of the arbitration panel was in error. Appellants' request that the decision of the trial court denying their petition to vacate the arbitration award be reversed, that such award be vacated and that this matter be remanded back to the Arbitration Panel.

Respectfully Submitted,

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